

**Senate Subcommittee Budget Hearing
Remarks of Chief Justice Marilyn Kelly
Tuesday, April 20, 2010**

Good afternoon. With me is Chief Judge William Murphy of the Michigan Court of Appeals who will present to you his court's budget proposal following my remarks. Also here with me are senior staff members of the Supreme Court and State Court Administrative Office. Let me introduce Carl Gromek, our State Court Administrator and Chief of Staff for the Supreme Court; Dawn Monk, Deputy State Court Administrator; Supreme Court Counsel Michael Gadola; Budget Officer Karen Ellis; Mark Dobek, Director of Judicial Information Systems; Kelly Howard, Director of Child Welfare Services; Steven Capps, Director of Trial Court Services; Richard Woods, Deputy Director of Trial Court Services; and Elizabeth Barber, Trial Court Collections Manager. They are here to help answer any questions you may have following my presentation.

The Michigan judicial branch represents but a very small percentage of the state budget – less than 1 percent of the gross state budget. And yet, we are charged, both by our constitution and through legislation, with great responsibilities, the most important being to maintain the rule of law. So, we have big responsibilities and we require a relatively small amount of money. Where does that money go? About two-thirds of our general fund appropriation goes to two items over which we have no control: judicial salaries and payments to local governments by statutory formula. The remaining one-third supports judicial branch operations: the Supreme Court, Court of Appeals, State Court Administrative Office, and the other judicial branch agencies. So, any general fund reduction falls hard on that remaining one-third.

Despite repeated budget cuts in recent years, we think we've used the money you've given us well. You have in your budget book details about some of the judiciary's key accomplishments, including the areas of court technology and collections. I highlighted some of these achievements in my State of the Judiciary address last week, so I won't go over those details. I do want to emphasize, however, the theme of these and other efforts by the state judicial branch in recent years. That theme is fiscal responsibility. We have worked very hard not only to cut costs with respect to that one-third of our budget that we do control, but also to see where we might help the state identify sources of revenue and save money.

For example, as reported starting on page 7 of our budget book, we now have a statewide collections plan that requires all state courts to comply with collections and reporting requirements. This plan is the culmination of years of effort by the Supreme Court and State Court Administrative Office with the help of a statewide committee of judges, court staff, and others. Ms. Barber has been instrumental in that effort, which not only has established best practices for court collections, but has also emphasized that collecting court-ordered sanctions must be a high priority for the courts. As you know, the money that the courts collect supports the Crime Victims' Rights Fund, law enforcement, local governments, and libraries, to name a few. And we in the judiciary are keenly aware of our obligation to collect that money. We also believe that effective collections heightens respect for courts and their orders.

We've made great advances in court-related technology in recent years. This is thanks in large part to the Judicial Information Systems division of the State Court Administrative Office, under the capable leadership of Mr. Dobek. I discussed many of these accomplishments in the State of the Judiciary address, so I will simply note that the net effect is to promote more effective law enforcement, greater efficiency for courts, and better use of limited resources. For example, a number of courts, including 36th District Court in Detroit, now offer online payment of traffic tickets, which frees up court employees' time for other tasks. And the video conferencing project described in your materials allows statutorily-required hearings to take place without the expense and risk involved in transporting prisoners and mental health patients to the courthouse, and permits Michigan State Police technicians to give expert testimony in court hearings without the time and cost of travel. We intend to continue using technology to increase people's access to the justice system, improve court efficiency, and save taxpayer dollars.

That is some of the good news about our judicial branch. The bad news is that, as Michigan's economy has deteriorated, we have found it increasingly difficult not only to fulfill our responsibility for the administration of justice, but also to meet duties specifically assigned to the judicial branch by you and by the state constitution, by the people. After years of sustaining budget cuts, we are now at a point where we may no longer have the funds to perform some of those mandated duties. I'll talk about that a little.

Since the year 2000, we have lost more than 18 percent of our full-time judicial employees – some by attrition, and some by layoffs. As of September 30, 2000, we had 526 FTEs; we now have 425. How does this affect our ability to

carry out our duties? Let me point to just three areas as examples: the Foster Care Review Board, trial court oversight, and drug treatment courts.

Among our legislatively-mandated responsibilities is the Foster Care Review Board Program. You established this program in 1984 through Public Act 422, most recently amended through 1997 PA 170, to monitor and support courts, the DHS, and child placement agencies in finding a safe and permanent home for children in our foster care system. The Foster Care Review Board also helps monitor our state's compliance with federal standards – the standards the state must meet to qualify for matching funds under the Social Security Act, Title IV-E. The Board plays a critical role, especially now when we can ill afford to lose any federal funding.

There is a statewide advisory committee and 30 local review boards, all made up of volunteers. But the program has to have staff to support the boards, do research, and recommend system modifications. The Foster Care Review Board also advocates for essential improvements in the delivery of local and statewide foster care services. This is a huge responsibility. Recall that there are roughly 16,500 children in foster care in Michigan at any given time. But, since 2007, we have lost five Foster Care Review Board staff members. We have not replaced them. In that way, we've saved \$310,000 in general fund dollars. But we've also significantly reduced the ability of the program to help the thousands of Michigan children in foster care.

Let me give just some brief examples of the good work that the Foster Care Review Board has done for Michigan's children. In a recent case in Oakland County, the Board reviewed the case of a 7-year-old boy named Eric. His parents couldn't care for him, lost their rights to him, and he was placed in foster care with a goal of adoption. But Eric had serious emotional behavioral problems, making it unlikely that he would be adopted. In fact, he had been moved to five different homes in less than one year, a terrible experience for any child. His maternal grandmother, Ruby, had expressed an interest in adopting him. But the adoption agency ruled her out, citing Ruby's long past history of alcohol abuse. The Foster Care Review Board strongly advocated for a closer evaluation of Ruby's current situation, including her capacity to care for Eric. The agency did so and concluded that Eric could be placed with Ruby. The review board also identified services that were more appropriate for Eric, and these were put in place. It is hoped that, by the end of this month, the adoption will be final. Without the Foster Care Review Board, Eric would very likely be bouncing from one foster home to the next, with

no hope of a stable life. Instead, he can look forward to a permanent home with his grandmother.

Or consider the case of 11-year-old Carla and her nine-year-old brother Rodrick, who were in a pre-adoption placement with their grandmother and her boyfriend in Wayne County. The Foster Care Review Board raised red flags about this planned adoption, finding significant risk for abuse and neglect, and urged that the children be placed elsewhere. As a result of the Board's repeated warnings, Carla and Rodrick were removed from that placement. Authorities then learned that the children had been severely neglected, that the grandmother was an alcoholic, and that the grandmother's boyfriend had sexually abused Carla. Carla and Rodrick were placed with other relatives, who now are in the process of adopting them. While what the children experienced is nothing short of a tragedy, it would have undoubtedly been far worse for them had the adoption been finalized as planned. It was the Foster Care Review Board that put an end to this abuse.

These are just two examples of the impact that the Foster Care Review Board has on the lives of Michigan children. In most cases, of course, the child welfare agency and the courts have made appropriate decisions. But how good it is that we have another set of eyes that can raise concerns where the court or DHS have overlooked something. However, because of the cuts that have taken place over the last three years, the number of children the Board can review each year has been cut almost in half. There are more Erics, Carlas, and Rodricks who need our help – but will we be able to provide it?

Trial court oversight is another area challenged by repeated budget cuts over the years. As you know, the Michigan Constitution gives the Michigan Supreme Court general superintending control over all state courts -- that's 244 trial courts, 618 judges, and approximately 9,000 trial court employees. The majority of this oversight responsibility is handled through the State Court Administrative Office, specifically by our four regional offices, and the Trial Court Services Division, which is headed by Mr. Capps and Mr. Woods. The four regional offices have particularly close ties to the trial courts; they function as the Supreme Court's liaison to the local courts. The regional offices are literally the Supreme Court's eyes and ears on the ground. It is through them that we learn of the inner workings of each trial court and about each judge. It's also through the regional offices that we address problems in the trial courts. The continued high quality of the Michigan trial courts is due in large part to the oversight that the regional offices exercise and the services that the Trial Court Services Division provides. Indeed, Trial Court Services provides a breathtaking range of services and resources to the trial courts:

handbooks, on-site reviews of court operations, and assistance with every conceivable aspect of court operations.

Now, seven positions in those offices have become vacant since 2007. We've replaced them with two part-time contractual people, saving \$613,000 in general fund dollars. For example, in Region 1, which includes the metro Detroit area, we are now down two full-time positions. We've saved a substantial amount of money by not filling the empty positions, but at the same time, we're severely hampered in our ability to oversee courts there.

Let me give just one example of a critical area that Trial Court Services is poised to address, but cannot, due to lack of funding and staff. That is the need for court interpreters. Imagine being charged with a crime, or being a party or witness in a civil lawsuit. That's an intimidating prospect for most people. Now imagine having to be in that situation and not understanding the language that everyone else in court is using. That is a serious due process issue. If you are a criminal defendant, you have the right to understand the charges against you and to be able to participate in your own defense, which includes understanding the evidence being presented against you. If you are in a civil suit, you can't adequately defend your interests if you can't understand what others in court are saying and if you can't make yourself understood.

The court interpreter is the answer to this communications gap. He or she must be properly trained and certified. But unfortunately, currently, we lack the staff to draft rules for court interpreters or to train trial courts on when and how to use interpreters. This is a critical issue, particularly because many people in Michigan are not fluent in English. Yet we cannot fully address it with Trial Court Services at its current staffing level.

Lastly, a word about our drug treatment courts, which you have made possible and govern by legislation. Michigan has long been a national leader in what has become known as the "therapeutic jurisprudence" or "problem-solving courts" movement. As you heard me explain during the State of the Judiciary address last week, these programs have literally exploded in number, a testament to their effectiveness in addressing the underlying problem a lawbreaker has, such as drug addiction or alcohol abuse, which contribute to the person's criminal behavior. Studies indicate that these programs reduce recidivism and are less costly over the long term than incarceration. The most conservative national estimate is that every dollar invested in drug courts reaps between \$2 and \$3 in direct-cost

savings to society. Evaluation of two Michigan drug courts showed a combined savings of almost \$1 million over 24 months.

There is also the incalculable value of a human life. During the State of the Judiciary address, I introduced to the Legislature a woman named Crisiana Palacios-Ostrom, a graduate of the felony sobriety court program presided over by Judge Harvey Hoffman in Charlotte. She went from being a repeated drunk driver to a life of sobriety and responsibility, thanks to Judge Hoffman and his program, and to her own efforts. Michigan's therapeutic courts can tell many, many such stories of reclaimed human lives – for example, Richard and Shawn, two young men who recently graduated from Muskegon County's sobriety court. Both had been arrested, two years earlier, for misdemeanor drunk driving. Both have completed an 18-month program of therapy, mutual support, and intense supervision. You might think that they would resent the experience and the scrutiny, and indeed, both reported being very glad to be done with the program. But they were also very grateful. Richard said, and I quote, "If I didn't get pulled over, I'd have killed somebody ... This program has definitely changed my life." Shawn said that if he hadn't been arrested and put into the program, "You probably would have thrown me in a coffin." Therapeutic courts are literally saving lives.

By returning these offenders to productive and responsible lives – and saving incarceration costs -- these courts are doing the state and the taxpayers a great service, particularly in this economy. Yet state funding has not kept pace with the growth in Michigan's problem-solving courts. Since 2007, combined general fund and state restricted revenue has fallen by more than \$300,000. Simply put, a lack of funding for these courts will end up being costly to the state and to the individuals, including families, veterans, and mental health patients, whom we will not be able to serve.

I am well aware that other state agencies and governmental functions are also suffering. I emphasize the issues I have only to illustrate that the judiciary has duties, many of them imposed by constitutional and legislative mandates, which it cannot continue to fulfill properly under repeated budget cuts. I could give you many more examples, including some involving the Friend of the Court Bureau, which is mandated by statute and which assists the Friends of the Court in collecting child support, among other services. For now, suffice it to say that we have a great many mandates and ever-fewer resources with which to meet them.

Finally, if you will bear with me, I'd like to say a few words in praise of our judicial branch staff. I have never known a more creative, committed group, and they have borne the impact of budget cuts without complaint. They've been hit with furlough days. Over the last seven years, judicial branch employees have received fewer than half the cost-of-living increases received by executive branch employees. I am very proud of our judicial branch employees and very grateful to be working with them.

And I also have a comment about the Court of Appeals budget. It has suffered because of a reduction in filing fee revenue during the past few years. I do support the Court of Appeals' efforts to regain a consistent funding source. I would note, however, that all areas of the judiciary budget have undergone serious reductions in funding. Any increase in the Court of Appeals budget should not come at the expense of other judiciary programs.

What do I ask of you, specifically?

First, please realize that the Governor's budget recommendation leaves us with \$500,000 less than we had this year. If you adopt that, we'll have to make cuts, possibly in the Foster Care Review Board staff. We'd like that \$500,000 replaced in FY 2010-11. The House's response to this issue was to use the balance in the Juror Compensation Fund to cover the \$500,000.

Second, we earnestly want to fill just a few of the staff vacancies in the Regional Offices, Trial Court Services, Foster Care Review and the Reporter's Office. Eleven more people needed in those areas would cost \$840,000. So, our total budget request is \$1,340,000 more than the Executive Branch recommendations and \$840,000 more than the budget passed by the House for the Michigan Supreme Court and the State Court Administrative Office. This wouldn't allow us to fully restore operations, but it would allow us to get closer to what we believe is a minimum level of service.

I will be glad to take any questions you may have for me. Thank you for this opportunity to address you.